ORISSA HIGH COURT
CUTTACK

OJC NO. 615 OF 2000

In the matter of an application under Articles 226 and 227 of the Constitution of India.

Nirupama Tripathy and others ------ Petitioners

-versus-

Union of India and others ------- Opposite Parties

For petitioners - M/s G. A.R. Dora, J.K. Lenka,
S.P. Mishra & G.Rani Dora

For opp.parties - Mr. J.K. Mishra.
Assistant Solicitor General
(for opp.parties 1 to 3)

M/s. B.S. Tripathy & M.K.Rath
(for opp.party no.3)

P R E S E N T :

THE HONOURABLE MR. JUSTICE I.M. QUDDUSI
AND
THE HONOURABLE MR. JUSTICE PRADIP MOHANTY

Date of hearing and judgment : 30.06.2005

I.M. QUDDUSI, J. This writ petition has been filed against the judgment and order dated 7th January, 2000 passed by the Central Administrative Tribunal, Cuttack Bench, in separate O.As. filed by the petitioners no.1 to 4 as O.As. No.748 of 1994, 749 of 1994, 750 of 1994 and 751 of 1994, by which all the O.As. have been dismissed.

2. Brief facts of the case are that the Regional Director, Employees State Insurance Corporation, called for the names of suitable candidates for the post of Lower Division Clerk in his office on ad hoc basis. The Employment Officer, District Employment Exchange, Bhubaneswar was requested to sponsor the names of at least 40 number of suitable candidates. In the prescribed pro-forma of notification of vacancies, the age limit was mentioned as 18 to 25 years, the upper age limit being relaxable by 5 years in case of S.C. and S.T.

candidates. The request to sponsor names was made vide letter dated 04.06.1991. Thereafter, according to the statement, which came through the counter affidavit filed before this Court on behalf of the opposite parties, a type writing test followed by interview was conducted and candidates were selected by the Selection Committee in which petitioners' name found place. Under the rules applicable to the department namely the Employees State Insurance Corporation (Recruitment) Regulations, 1965, the recruitment was to be made by the Departmental Committee. However, later such recruitments were being conducted by the Staff Selection Commission. At the time of selection of the petitioners by the Corporation, it was the Staff Selection Commission which was the recruitment body and, as such, the petitioners' recruitment by the Corporation was made on ad hoc basis. The petitioners were initially appointed purely on ad hoc basis for three months. But later on, their period of appointment was extended from time to time. They all were appointed in the year 1992 for three months or till availability of the regularly selected candidates, whichever is earlier. This appointment, when continued from time to time, lastly made for an indefinite period. But the fact is that the status of the petitioners remained the same, i.e., ad hoc.

3. In the year 1994, the petitioners approached the Central Administrative Tribunal through the above mentioned O.As. with a prayer for regularisation of their ad hoc appointments. The petitioners were also apprehending that their services may be terminated at any time during pendency of the O.As. Therefore, they sought protection by way of interim relief and the Tribunal directed that their services should not be terminated without leave of the Tribunal vide order dated 30.12.1994. But that order was modified to the extent that the order will remain in operation till disposal of the O.As. or till regularly selected candidates in accordance with rules become available and no surplus post of L.D.C. remains available to accommodate the applicants. Ultimately, the O.As. were heard and decided by judgment and order dated 7th January, 2000 resulting in dismissal of the O.As. The facts mentioned by the Tribunal in its judgment on the basis of which the O.As. were dismissed were that in the absence of any averment on record to the holding of typing test, it is not possible to hold that the applicants had appeared in a type writing test in which they were successful. Later, they were selected by holding an interview by a selection committee constituted as per Head Office letter dated 13.03.1991

and 15.05.1991 and, therefore, the petitioners did not come through a regular process of selection and, as such, are not entitled to be regularised. The Tribunal has referred the case of Director General, ESIC & Anr. V. Shri Trilok Chand & Ors. decided by the Hon'ble apex Court vide judgment dated 10th December, 1992 in Civil Appeal Nos.5302-5 of 1992 and mentioned that the case of the instant petitioners is similar to the case of Shri Trilok Chand in which the Hon'ble apex Court had allowed the appeal after granting leave in SLP and rejected the claim of regularisation of those employees who were also appointed on casual or ad hoc basis for three months or till candidates are available as a result of regular selection held for the purpose.

4. Learned counsel for the opposite parties has also placed reliance on the decision in Director General, ESIC and Anr. V. Shri Trilok Chand & Ors. (supra) and submitted that the case of the instant petitioners is also similar to that case.

5. We have gone through the judgment and order passed by the apex court and found that the facts of this case are quite different from the facts of the case of Shri Trilok Chand (supra). Although the petitioners were appointed initially for a period of three months on ad hoc basis, but the following facts are relevant to distinguish their case from that of Shri Trilok Chand (supra) :

(i) The name of at least 40 candidates were sponsored from the Employment Exchange mentioning in the requisition letter specifically " **.....**for recruitment to the post of LDC in this office on Adhoc basis".

(ii) A departmental selection committee was constituted for making such recruitment on ad hoc basis.

(iii) A type writing test was held and those who qualified in the type writing test were called for interview.

(iv) The interview was held by the departmental selection committee and only thereafter the petitioners were given appointment.

(v) Initially the ad hoc appointment of the petitioners was for three months' period, but later on it was extended from time to time and ultimately it became for an indefinite period.

(vi) No regularly selected candidate had become available when these petitioners filed their O.As. for their regularisation.

(vii) In the year 1996, the Deputy Regional Director had informed the Director General, ESI Corporation, New Delhi vide his letter No.44-A-11/21/1/91-Adm. dated 15.02.1996 about the position in the statement showing the sanctioned strength, staff in position and total strength. In respect of LDC the total sanctioned strength has been shown as 19, the staff position has been shown as 14 and the total strength has also been shown as 14, meaning thereby that after inclusion of the petitioners the strength of LDC in the office was 14 while the sanctioned strength was 19. Therefore, five more posts were lying vacant.

(viii) According to the counter affidavit, the requisition was sent to the Staff Selection Commission vide letter dated 23.11.1993 for sponsoring candidates to the post of LDC for Orissa region. In response to it only three candidates were sponsored by the Staff Selection Commission on 12.12.1994. Therefore, vacancies, even after adjustment of three regularly selected candidates, remained there. The vacancies were only two more in case the number of petitioners, i.e., four, is included in the sanctioned strength.

(ix) Thereafter, the Staff Selection Commission vide their letter dated 22.03.1996 informed the ESI Corporation to make its own arrangement for recruitment to the post of LDC.

(x) There was no order regarding termination of services of the petitioners till 2000 and after the decision of the Tribunal for the first time the services of the petitioners were terminated vide order dated 25.01.2000. But at that time, regularly selected candidates were not available to fill up these posts.

6. In the case of Shri Trilok Chand (supra), appointment of candidates continued till the candidates were available as a result of regular selection and, hence, there was no scope for Trilok Chand and others to continue on ad hoc basis on the availablity of the regularly selected candidates. Therefore, the Hon'ble apex Court has also held that the decision in State of Haryana v. Piara Singh, AIR 1992 SC 2130 was not applicable to the case of Shri Trilok Chand.

From the above, it is clear that the case of the present petitioners is quite different from that of Trilok Chand and others.

7. In the case of the instant petitioners, regularly selected candidates are still not available to fill up the posts held by them and at the time of issuance of their termination order they had already completed almost nine years of service. Therefore, in their case, we are of the opinion that the principle laid down in Piara Singh's case (supra) would be clearly applicable, the relevant paragraph of which is quoted below :-

> " If for any reason an ad hoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularization provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State."

In the instant case, as already mentioned above, the names of at least 40 candidates were sponsored from the Employement Exchange for recruitment on ad hoc basis by the Departmental Selection committee. Naturally a competitive type writing test was held of those persons, who were sponsored from the Employment Exchange and only successful candidates in type writing test were called for interview and after being declared selected, the candidates were given appointment in which the petitioners were also there.

8. The purpose of making recruitment on ad hoc basis was that the Departmental Selection Committee was not authorised to make regular recruitment and it was only the Staff Selection Commission which was the authorised recruitment body under the rules. When the Departmental Selection Committee became the recruitment body, the petitioners who had already been selected by the Departmental Selection Committee could be considered for regular appointment. But this was not done. It is also to be noticed that in the year 1997, the Departmental Selection Committee had held a selection to fill up the posts of LDC, but the petitioners could not have participated in that selection as they had already become overaged and no relaxation was given to them. The present situation is that no regularly selected candidate is available and four posts are lying vacant due to the termination order of the petitioners and by way of interim order dated 12.06.2003 this Court has already directed that those four posts may not be filled up due to the reason that the matter is subjudice before this Court, meaning thereby that from the year 2000, i.e., from the date of order of termination, till the date of passing the interim order, i.e., about three years, the posts remained vacant and were not filled up by holding selection under the rules.

9. Learned counsel for the petitioners has placed reliance on paragraph 18 of a Division Bench decision of this Court in a batch of writ petitions viz. OJC Nos.7289, 7159, 7161, 7186 & 7325 of 2000 and 404, 10459 & 15241 of 2001 decided on 31.03.2003 leading case of which was OJC No.7289 of 2000 (Pradeep Kumar Nayak and 2 others v. Board of Directors, represented by the Chairman, O.L.I.C. Ltd. & Ors.) which is quoted as under :-

> " Coming now to the plea of the Corporation that the World Bank and other funding agencies are insisting on reduction in the strength of the staff of the Corporation, such reduction of staff can be achieved by Voluntary Retirement Scheme. Those who have put in fairly long spell of service, say of 20 to 30 years, and have attained 50 to 55 years may be retired under a scheme for voluntary retirement as a measure for reduction of the staff strength of the Corporation. But NMR employees, such as the petitioners who are young and are yet to be regularized in service and on such regularization will have several years of service, cannot be denied regularization on the ground that reduction of staff strength is being insisted upon by the World Bank and other funding agencies. Moreover, the petitioners have been engaged as N.M.R. Junior Engineers of the Corporation for more than ten years and their services have been utilized by the Corporation and they cannot be continued on N.M.R. basis at a subsistence level. Continuance of the petitioners as N.M.R. Junior Engineers any longer would amount to exploitation of the petitioners by the Corporation, which is not expected of an instrumentality of a State like the Corporation."

It is to be noted that the Lift Irrigation Corporation had filed SLPs in the Hon'ble apex Court, against the said judgment, registered as SLP (Civil) Nos.16984-16991 of 2003, which were dismissed vide order dated 22.09.2003 by the apex Court.

10. Considering the facts and circumstances of the case, we are of the firm opinion that the judgment of the Tribunal is based on wrong facts which had been clarified by the opposite parties in their counter affidavit to the effect that recruitment on ad hoc basis was made on the basis of the candidates sponsored from the Employment Exchange, a typing test was held and thereafter interview was also held by the Selection Committee and then only the selected candidates were appointed. This is also a fact that no time bound appointment of the petitioners remained as it was extended from time to time and lastly for an indefinite period and also that no regularly selected candidate became available and, when the petitioners approached the Tribunal for

regularisation of their services no selection for regular appointment was made by the opposite parties or Staff Selection Commission.

11. In view of the above mentioned facts and circumstances, the writ petition is allowed in part. The impugned judgment and order passed by the Tribunal in the O.A. Nos.748, 749, 750 and 751 of 1994 dated 7th January, 2000 is quashed. Following the ratio decided in the Piara Singh's case (supra), a writ of mandamus is issued to the opposite parties to the effect that since the petitioners had continued for a quite long period their case for regularisation shall be considered and till such consideration they shall be given continuity as ad hoc employee. Since the order of termination was passed on the basis of the judgment and order passed by the Tribunal, which is a consequential order, the same is also quashed.

The writ petition is accordingly disposed of. No order as to costs.

This order shall be complied with within a period of ninety days from the date of receipt of a copy of this order either produced by the petitioners or communicated to the opposite parties, requisites for which shall be filed within a week.

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I.M.Quddusi, J.

PRADIP MOHANTY,J. **I agree.**

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Pradip Mohanty, J.

Orissa High Court, Cuttack.
June 30, 2005/*Samal.*